

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOAN SANTOS**

Claimant

VS.

**WESLEY MEDICAL CENTER**

Self-Insured Respondent

Docket No. 1,030,185

**ORDER**

**STATEMENT OF THE CASE**

Respondent requested review of the June 25, 2008, post-award medical Award entered by Administrative Law Judge Nelsonna Potts Barnes. Mitchell W. Rice, of Hutchinson, Kansas, appeared for claimant. Douglas C. Hobbs, of Wichita, Kansas, appeared for the self-insured respondent.

The Administrative Law Judge (ALJ) found that claimant's current need for treatment was causally related to her work injury of October 24, 2005. Accordingly, the ALJ authorized Dr. John Osland to provide additional medical treatment for claimant as outlined in his examination notes of September 7, 2007.

The Board has considered the record as listed in the Award, as well as the transcript of the Settlement Hearing held June 26, 2007. This matter was placed on the Board's summary docket for determination without oral argument.

**ISSUES**

Respondent contends that claimant failed to meet her burden of proving that her alleged knee pain is causally connected to her work-related injury to her meniscus or that her now-healed meniscus caused her latest fall, that there has been any aggravation of her work-related injury or any new injury for which additional medical treatment is needed, or that arthroscopic surgery is reasonably necessary to cure or relieve the effects of claimant's work-related injury.

Claimant argues that she met her burden of establishing that she is entitled to post-award medical treatment.

The issue for the Board's review is: Is claimant entitled to post-award medical treatment?

#### FINDINGS OF FACT

Claimant is 50 years old. She admits having problems with her knees beginning when she fell at age 15 while participating in gymnastics. Arthroscopic surgery was performed on her left knee in 2003 by Dr. John Estivo after she tripped over a dog at home. During the surgery, Dr. Estivo found that claimant had Grade 3 chondromalacia, which he described as fairly substantial degeneration to the cartilage.

On October 24, 2005, claimant tripped at work, after which she suffered bilateral knee pain. She underwent two surgeries for a torn medial meniscus on her left knee, the first by Dr. Kneidel and the second by Dr. John Osland. She settled her claim on June 26, 2007, based on a 9 percent functional impairment to the left lower extremity and a 5 percent functional impairment to the right lower extremity. Future medical was left open.

Claimant continued to have constant knee pain after the settlement hearing, but she continued to perform her job duties. She claimed that the pain worsened and at times her knee would give out. Either shortly before or after midnight, August 30, 2007, her knee gave out as she was getting out of bed, and she fell to the floor. She was taken to the emergency room and was given Percocet for the pain, as well as a splint, which she did not use because it caused her more pain. She has not used any pain medication after finishing the Percocet but takes a herbal supplement that works as an anti-inflammatory.

Claimant had an MRI of her left knee a week before the August 30 fall and was scheduled to see Dr. Osland to get the results of that MRI on September 7, 2007. She had previously seen Dr. Osland for treatment of her October 2005 injury and, in fact, he performed one of the three arthroscopic surgeries she has had on her left knee.

Upon examination of claimant on September 7, 2007, Dr. Osland found that she had tenderness in the front of the left knee. He did not think she had any ligament injuries. She also complained of a burning pain going down the anterior aspect of her knee and down the shin. The burning was not in a pattern he would normally expect to see. He testified that the pain "was not in an anatomical pattern with a normal nerve pattern, it just was a burning pain."<sup>1</sup> She complained of tenderness when doing any type of motion or activity with her knee. Dr. Osland found that her muscles worked fine but were weak and tender. He did not find any change to her meniscus compared to what he had seen the last time he examined her. His notes indicated that claimant had no tenderness over the

---

<sup>1</sup> Osland Depo. at 8.

meniscus on the joint line. Dr. Osland "thought that she probably had significant pain with some arthritic change, probably some synovitis in her knee."<sup>2</sup>

Because claimant was having so much pain in her left knee and had been getting worse, he recommended a knee arthroscopy to look at her knee to see if anything could be done to help her discomfort. He did not think she had enough wear and tear in her knee that she needed a total knee replacement but thought she needed to have someone take a look arthroscopically and clean things up.

Dr. Osland opined that if claimant had never had the injury of October 24, 2005, she probably would not be having episodes where her knee gave out. Therefore, it was his opinion that there was a correlation between her initial injury and her current need for arthroscopic surgery. He admitted that the August 2007 MRI showed more arthritis than claimant's previous MRIs and said her arthritis was progressing. He agreed that her arthritis would not go away and would continue to get worse as long as she has activity of the knee. However, he was not recommending surgery because claimant had arthritis but because he thought she may have injured some other structure in her knee. She had tenderness in the front of the knee joint, not in the area of the meniscus or the weight-bearing area where the arthritis would be. He believes claimant's problem is higher in the joint and is not due to arthritic changes.

Dr. John Estivo performed an independent medical examination claimant on November 30, 2007, at the request of respondent. Her history contained a report of an incident on October 24, 2005, when she tripped over another person's foot while working at respondent. That fall resulted in a meniscal tear that was treated first by Dr. Kneidel and then by Dr. Osland.

After examining claimant on November 30, he diagnosed her with post three left knee arthroscopies, two of which related to an October 24, 2005, work injury, and with degenerative changes to the left knee. He said the degenerative arthritis was ongoing and progressive but was a preexisting process that long preceded the October 24, 2005, injury date. He recommended she be treated for her arthritis outside of workers compensation. He also recommended that claimant continue with exercises as shown to her by the physical therapist. Based upon his examination of claimant and her history, he opined that she was not dealing with a meniscal tear and therefore did not need further surgery.

Dr. Estivo believes claimant's knee problems are being caused by her degenerative arthritis. Dr. Estivo said that synovial tissue is basically the inside lining of the knee, not a mechanical structure, and cannot be damaged in an accident. He did not believe that claimant's fall in October 2005 and resulting surgery contributed to the current condition of claimant's knee.

---

<sup>2</sup> *Id.*

**PRINCIPLES OF LAW**

K.S.A. 2007 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

K.S.A. 2007 Supp. 44-508(g) defines burden of proof as follows: "Burden of proof means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

K.S.A. 2007 Supp. 44-510k(a) states in part:

At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. . . . The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award.

An accidental injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.<sup>3</sup> The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates the condition.<sup>4</sup> An injury is not compensable, however, where the worsening or new injury would have occurred even absent the accidental injury or where the injury is shown to have been produced by an independent intervening cause.<sup>5</sup>

In *Logsdon*,<sup>6</sup> the Kansas Court of Appeals held:

Whether an injury is a natural and probable result of previous injuries is generally a fact question.

When a primary injury under the Worker's Compensation Act is shown to have arisen out of and in the course of employment, every natural consequence

---

<sup>3</sup> *Odell v. Unified School District*, 206 Kan. 752, 758, 481 P.2d 974 (1971).

<sup>4</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, Syl. ¶ 2, 949 P.2d 1149 (1997).

<sup>5</sup> *Nance v. Harvey County*, 263 Kan. 542, 952 P.2d 411 (1997).

<sup>6</sup> *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006).

that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.

When a claimant's prior injury has never fully healed, subsequent aggravation of that same injury, even when caused by an unrelated accident or trauma, may be a natural consequence of the original injury, entitling the claimant to postaward medical benefits.

In *Casco*,<sup>7</sup> the Kansas Supreme Court stated: "When there is expert medical testimony linking the causation of the second injury to the primary injury, the second injury is considered to be compensable as the natural and probable consequence of the primary injury."

### ANALYSIS

The issue of whether claimant is entitled to post-award medical treatment is dependent upon whether claimant's present need for treatment is compensable as a direct and natural consequence of her October 24, 2005, work-related accident. If claimant suffered injury from her fall at home on August 30, 2007, was that fall a result of her work-related injury, or was it a new, intervening accident and injury? Conversely, if claimant did not sustain a new injury from her fall at home on August 30, 2007, is her current need for treatment a result of her work-related accident and injury or a natural progression of her preexisting condition?

The Kansas Court of Appeals in *Logsdon* held that an injury resulting from an accident that occurred 10 years after a work-related accident was compensable as a natural consequence of the work-related injury because that original injury had not fully healed and but for that original injury, the new accident would not have occurred.

Respondent argues that claimant's original work-related injury was only a torn meniscus in her left knee. However, the settlement was for an award based upon impairments to both knees. And because the original award was based upon a settlement, the full extent of claimant's injuries and aggravations from that accident is not clear. Nevertheless, the surgeries claimant underwent after that October 24, 2005, fall were primarily for a torn meniscus in the left knee. Dr. Osland seems to concede that claimant's meniscal injury had healed before the August 30, 2007, fall and her left knee was stable.

Dr. Estivo diagnosed degenerative changes to claimant's left knee unrelated to either her October 24, 2005, or August 30, 2007, falls. He believed the changes were due

---

<sup>7</sup> *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 516, 154 P.3d 494, *reh. denied* (2007).

to a preexisting condition that will continue to worsen regardless of activity. He does not recommend surgery.

Dr. Osland, the authorized treating physician, disagreed with Dr. Estivo as to both causation and treatment. He recommends an arthroscopic examination of claimant's left knee due to her pain. He attributes claimant's pain to arthritic changes and synovitis. The purpose of this surgery is "to go in and take a look arthroscopically and clean things up."<sup>8</sup> When asked whether claimant's present need for treatment was causally related to her original October 24, 2005, work-related injury, Dr. Osland replied:

Well, I think if she'd never had the initial injury, she probably wouldn't have had the episode of her knee giving out, so I felt that, yeah, there was correlation based on her knee getting worse over time that required her to need this last surgery.<sup>9</sup>

Dr. Osland also disagreed that claimant's arthritis would worsen regardless of activity. He said there has to be a repetitive weight-bearing motion for arthritis to worsen. It would not worsen from sedentary or no activity. Furthermore, Dr. Osland said it was not primarily for the arthritis that he was recommending surgery but to see whether there was a tear or injury to some other structure of the knee. As such, it appears that the recommended surgery is for both diagnosis and treatment.

Based upon the expert medical opinion of the authorized treating physician, Dr. Osland, the Board finds that the treatment he recommends for claimant is for the natural consequences of her original work-related injuries.

### **CONCLUSION**

Claimant has met her burden of proving that she is entitled to the post-award medical treatment benefits awarded by the ALJ.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the post-award medical Award of Administrative Law Judge Nelsonna Potts Barnes dated June 25, 2008, is affirmed.

**IT IS SO ORDERED.**

---

<sup>8</sup> Osland Depo. at 9.

<sup>9</sup> *Id.* at 9-10.

Dated this \_\_\_\_\_ day of September, 2008.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: Mitchell W. Rice, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Self-Insured Respondent  
Nelsonna Potts Barnes, Administrative Law Judge